

STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

In the Matter of Unfair Labor Practice No. 10-79

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS, LOCAL NO. 448,  
complainant,

vs.

SANDERS COUNTY MONTANA,  
defendant.

WITHDRAWAL OF EXCEPTIONS  
AND CONSENT TO ENTRY OF ORDER

Sanders County, Montana, defendant, through the undersigned, its county attorney, hereby withdraws its exceptions and request for hearing from the recommended order dated April 3, 1979, on file herein. The undersigned further represents that Sanders County, through its Board of County Commissioners did on May 31, 1979, execute a form of agreement between Sanders County and the plaintiff in substantially the same form as appears on file herein and as prepared and previously signed by the complainant; and, it is the County's intention at its next regularly scheduled official meeting for approval of claims to authorize payment of additional wage benefits pursuant to the terms of said agreement.

DATED this 1st day of June, 1979.

Sanders County Attorney

CERTIFICATE OF MAILING

I, Pamela DeWitt, secretary to the Sanders County attorney, do hereby certify that on the 1st day of June, 1979, I served the foregoing withdrawal of exceptions and consent upon the following by mailing a copy thereof first class, pre-paid postage to: (1) Robert L. Jensen, Administrator, Board of Personnel Appeals, P. O. Box 202, Capitol Station, Helena, Montana; (2) Robert Skelton, Skelton & Knight, Attorneys at Law 127 E. Main, Missoula, Montana; (3) Bruce Midgett, Hearing Examiner, Board of Personnel Appeals, P. O. Box 202, Capitol Station, Helena, Montana; and, (4) Jack Agen, Teamsters Local No. 448, P. O. Box 51, Kalispell, Montana.

*Pamela de Witt*  
Pamela DeWitt, Secretary  
Office of the Sanders County Attorney

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 10-79:

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The bargaining agent further alleges that members of the bargaining unit voted on December 7, 1978 to accept the Commissioners' offer through Mr. D'Hooge, that the bargaining agent executed and signed an original and two copies of a collective bargaining agreement incorporating the Commissioners' offer and forwarded all copies of the agreement along with

a notification of the bargaining unit's acceptance of their offer to the Commissioners.

The bargaining agent further alleges that on December 27, 1978, the Commissioners withdrew their offer and returned the agreement unsigned.

The bargaining agent therefore alleges that the Commissioners have committed an unfair labor practice pursuant to Section 39-31-401(5), M.C.A.

## II. FINDINGS

On March 21, 1979, beginning at 10:00 a.m., a hearing was held in the jury room of the Sanders County Courthouse to determine the truth of the Unfair Labor Practice charge made by the bargaining agent. Both the bargaining agent and the County were represented by Counsel, the former by Robert Skelton and the latter by Robert Fletcher. Hearing Examiner for the proceedings was Bruce Midgett. Testifying in behalf of the bargaining agent (complainant) were Carl Hayen, a Sanders County employee; Richard Breitenback, Sanders County employee; Jack Agen, union representative; and Sam Silverthorne, union representative. Testifying in behalf of the County were Henry Gill, former Sanders County Commissioner; George Wells, Sanders County Commissioner; and Norman Resler, Sanders County Commissioner.

At a pre-hearing, both parties stipulated that the only substantive point at issue in the complaint was whether or not the offer represented in Mr. D'Hooge's letter of November

16, 1978 was, in fact, a bona fide offer which the Commissioners authorized Mr. D'Hooge to submit to the bargaining agent for consideration by the bargaining unit. With that stipulation agreed to, neither the hearing nor this report is concerned with the other details of the charge.

The essence of the Commissioners' testimony was that they had interpreted both Mr. D'Hooge's final verbal report, given on November 16, 1978 before both the Commissioners and representatives of the bargaining agent and his letter of November 16, 1978, as accounts of points at hand with neither the force nor the substance of a contract offer to settle outstanding issues.

Their testimony does not, however, counterbalance the weight and meaning of Mr. D'Hooge's November 16, 1978 letter. Not only is the offer represented in the letter clearly described and labelled as an offer from the Commissioners, but Mr. D'Hooge requests that both parties review his letter and notify him of any errors. Had the Commissioners given Mr. D'Hooge such notification, the alleged offer in Mr. D'Hooge's letter would not have been interpreted as a bona fide offer. In the absence of such notification, however, Mr. D'Hooge's letter assumes the nature of a memorandum of understanding, wherein both parties share the mediator's interpretation of the alleged offer.

### III. CONCLUSION

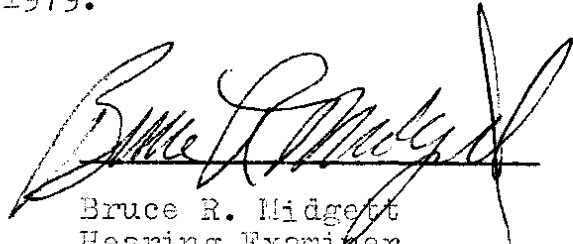
In the absence of an agreement as to the form in which a contract offer must be made during collective bargaining negotiations between these two parties, it must be assumed that a bona fide offer may be in any generally understood oral or written form, either in person, through agents, or through a mediator or other third party. The written offer represented by Mr. D'Hooge's letter certainly fits that definition. It is therefore determined that Mr. D'Hooge's letter of November 16, 1978 did, in fact, represent a valid contract

offer from the Commissioners to the bargaining agent and that, furthermore, the Commissioners' withdrawal of that offer after it was accepted by the bargaining unit represents an unfair labor practice as defined in Section 39-31-401(5), M.C.A. Specifically, by withdrawing their offer, they ceased, and therefore essentially refused, to bargain collectively in good faith.

#### IV. RECOMMENDED ORDER

The County is required to accept the collective bargaining agreement as executed by Teamsters Union Local 448 and Operating Engineers Local 400 and signed by Jack Agen and Sam Silverthorne to the extent that it represents the offer described in Mr. D'Hooge's November 16, 1978 letter and all other points previously agreed upon by both parties. Caution must be exercised that if it is subsequently found that the County will suffer loss of funding or other penalty due to the size of the wage settlement in the offer, some issues may have to be renegotiated.

Dated this 3rd day of April, 1979.



Bruce R. Midgett  
Hearing Examiner

CERTIFICATE OF MAILING

I certify that true copies of the foregoing have been  
mailed to:

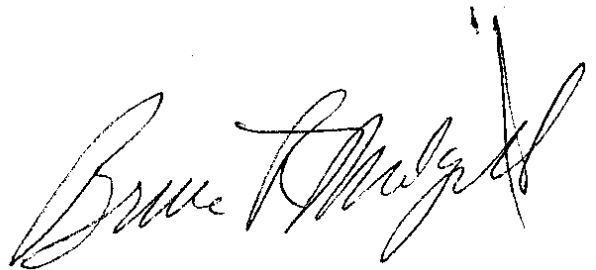
Robert R. Jensen, Administrator  
Board of Personnel Appeals  
P.O. Box 202  
Capitol Station  
Helena, MT 59601

Robert Skelton, Attorney  
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Sanders County Commissioners  
Sanders County Courthouse  
Thompson Falls, MT 59873

Jack Agen  
Teamsters Local No. 448  
P.O. Box 51  
Kalispell, MT 59901

A handwritten signature in dark ink, appearing to read "Bruce R. Maltby", with a stylized flourish at the end.